



POLICE DEPARTMENT

March 25, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Carl Daniels
Tax Registry No. 915551
Transit Bureau District 32
Disciplinary Case No. 2012-7304

The above-named member of the Department appeared before me on January 14, 2015 charged with the following:

1. Said Police Officer Carl Daniels, on or about and between May 3, 2007, and April 25, 2012, while assigned to Transit Division District 32, while on-duty, off-duty, and on sick report, did wrongfully and without just cause engage in outside employment without authority or permission to do so.

P.G. 205-40, Page 1, Paragraph 1 OFF-DUTY EMPLOYMENT

2. Said Police Officer Carl Daniels, on or about and between January 1, 2009, and April 25, 2012, while assigned to Transit Division District 32, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he did submit time sheets to his outside employer, the New York State Office of Children and Family Services, which indicated that he worked for such outside employer during time periods that overlapped with his NYPD tours of duty, for a total overlap of 373:40 hours, on 213 different occasions.

P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL
P.G. 205-40, Page 1, Paragraph 1 – OFF-DUTY EMPLOYMENT

3. Said Police Officer Carl Daniels, on or about and between April 14, 2012, and April 20, 2012, while on sick report, while assigned to Transit Division District 32, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he did submit time sheets to his outside employer, the New York State Office of Children and Family Services, which indicated that he worked for such outside employer for a total of 8:00 hours, over the abovementioned [sic] 7 dates that said Police Officer was on sick report.

P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL
P.G. 205-40, Page 1, Paragraph 1 – OFF-DUTY EMPLOYMENT

The Department was represented by David Bernstein, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered pleas of guilty and testified in mitigation of the penalty. A stenographic transcript of the mitigation hearing record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent testified that in 1998 he submitted an application to engage in off-duty employment with the New York State Office of Children and Family Services (NYSCFS). His application was approved and he began working for NYSCFS during time periods when he was not on duty. Since Respondent was regularly assigned to perform midnight tours at Transit District 32, he would perform his NYSCFS work between the hours of 8:00 p.m. to 10:00 p.m. His job was to telephone the residences of juvenile offenders to insure that they had arrived home by their curfew hour. He was paid by NYSCFS for two hours of work regardless of how many, or how few, juvenile offenders he was assigned to call and regardless of how brief his conversation with each juvenile offender was.

From 1999 through 2006, Respondent submitted annual renewal applications requesting permission to continue to engage in this off-duty employment and was approved each time. On his 2006 renewal application, Respondent wrote that NYSCFS

gave him a "flexible work schedule around my NYPD employment." His 2006 renewal application was the last one he submitted. Although his Departmental permission to engage in this off-duty employment expired at the end of 2006, he continued to perform paid work for NYSCFS from May 3, 2007 to April 25, 2012.

Respondent testified that his work for NYSCFS only overlapped with his tours of duty on those occasions when either his tour of duty was changed or he was required to perform overtime. Respondent admitted that on those occasions he would make his telephone calls to juvenile offenders from a pay phone located on the platform of the Clark Street Subway Station, which was his regular post, or if he was assigned to patrol duties by using his cell phone. Respondent also admitted that between April 14, 2012 and April 20, 2012, even though he was on sick report, he made telephone calls to juvenile offenders from his residence and was paid by NYSCFS for eight hours of work.

On cross-examination, Respondent confirmed that under NYSCFS procedures when he telephoned a juvenile offender's home and learned that the juvenile offender was not there, he would have to make a second call and if the juvenile offender was still not home, he would have to place a call to NYSCFS in Albany, New York, to report the curfew violation. Respondent agreed that he was sometimes placed on hold or told to call back again later. Respondent also confirmed that [REDACTED]

[REDACTED] officers assigned to that post must be omnipresent and can only leave the post after receiving face-to-face relief. Respondent confirmed that although he could have requested that he be allowed to perform post tour overtime he "put in for pre-tour" overtime because performing post-tour overtime would have conflicted with his family duties.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on June 30, 1995. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded guilty and admitted that he engaged in outside employment for a five year period without having received permission to do so; that he engaged in work for his outside employer while he was on duty performing a tour of duty on 213 different occasions and billed his outside employer for 373 hours of work he performed during time periods that overlapped with his NYPD tours of duty; and that during a seven day period when he was on sick report, he performed work for NYSCFS and was paid for eight hours of work.

Respondent's admission that he engaged in NYSCFS work while he was on duty by making telephone calls from a pay phone inside the Clark Street Subway Station when he knew that the police booth [REDACTED] required his undivided attention and face-to-face relief, constitutes very serious misconduct.

In determining a penalty recommendation, I have also taken into consideration the fact that Respondent is a 20-year member of the service who has received consistently good annual performance evaluations and who has been the subject of formal discipline on only one prior occasion (see attached Confidential Memorandum).

The Assistant Department Advocate (the Advocate) recommended that Respondent be penalized by forfeiting 45 vacation days and serving one year on dismissal probation. The Advocate did not cite any prior disciplinary decisions to support this recommendation.

The Advocate also stated that Respondent should be required to make restitution to the Department in the amount of \$16, 920.40 because Respondent had engaged in “double dipping” in that he had received payment from a New York State agency for work that he performed during time periods that overlapped with his NYPD tours of duty. The Advocate explained that the \$16, 920.40 figure “represents the amount paid for the 265 hours and 55 minutes of overtime overlap, as well as adjustment of time and leave balances by 107 hours and 45 minutes which represents the overlap that was on straight time.”

New York Civil Service Law section 75(3-a) states that where a police officer employed by this Department is found guilty of misconduct charges, the Police Commissioner may impose punishment on the officer pursuant to the provisions of sections 14-115 and 14-123 of the Administrative Code of the City of New York.¹ Neither of these Administrative Code sections authorizes the Police Commissioner to impose restitution as a disciplinary penalty.

In a prior disciplinary decision where the misconduct was similar to the misconduct committed here, *Case No. 2012-6902* (Apr. 4, 2013), a nine-year officer who had no previous disciplinary record pleaded guilty and admitted at a mitigation hearing that for six years she had engaged in unauthorized off-duty employment as a crisis intervention specialist and that she had engaged in this off-duty employment on 48

¹ See *Montella v. Bratton*, 93 NY2d 424, 431; 691 NYS2d 372, 375-376; 1999 NY LEXIS 1289.

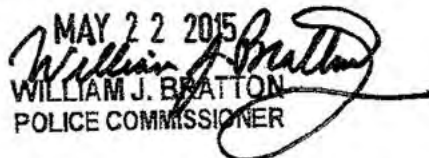
occasions while she was on maternity/sick leave. In that case, as here, the Advocate recommended that Respondent be required to make restitution to the Department as a part of the disciplinary penalty to be imposed on the officer.

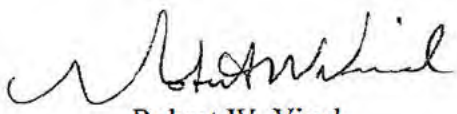
In that case, the Police Commissioner, noting that the officer had engaged in "serious misconduct in that she violated the Department's off-duty employment policy for a significant amount of time and she deceitfully manipulated the Department's sick leave policy," offered to allow the officer to enter into a post-trial negotiated agreement in which the officer agreed to forfeit 60 vacation days, serve one year on dismissal probation, and pay \$2,704.24 in restitution "as a disciplinary penalty."

Since I am constrained to recommend only those penalties which the Police Commissioner is empowered by law to impose, it is, therefore, recommended that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. It is also recommended that Respondent forfeit 60 vacation days.

Respectfully submitted,

APPROVED

MAY 22 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER


Robert W. Vinal
Assistant Deputy Commissioner Trials

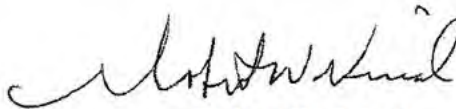
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CARL DANIELS
TAX REGISTRY NO. 915551
DISCIPLINARY CASE NO. 2012-7304

Respondent received an overall rating of 4.5 on his last three annual performance evaluation. He has one Excellent Police Duty medal. [REDACTED]
[REDACTED] He has no monitoring records.

He has a formal disciplinary record. In 2008, he forfeited 17 vacation days after he pleading guilty to engaging in a verbal dispute with a Traffic Enforcement Agent (TEA) who had issued him a parking ticket and blocking the path of the TEA as she attempted to leave the area.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials